

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

In re: OHIO EXECUTION
PROTOCOL LITIGATION,

: Case No. 2:11-cv-1016

Chief Judge Edmund A. Sargus, Jr.
Magistrate Judge Michael R. Merz

This Order relates to Plaintiff Cleveland Jackson

ORDER SCHEDULING NEXT STATUS CONFERENCE

During the telephone status conference on August 6, 2019, the Governor's public comments in connection with the reprieve of Warren Henness were noted. Plaintiff's counsel reported having a video record of those comments and was directed to file them with the Court. Defendants' counsel were unable to suggest any modifications in the scheduling of the Cleveland Jackson matter because they say they are waiting for a decision of the Sixth Circuit in *Henness v. DeWine*, Case No. 19-3064. Although that case is ripe on briefs, there is a pending motion for oral argument which has not been ruled on by the circuit court; whether or not oral argument is granted will obviously affect when the case will be decided. Because of the perennially tight timing of preliminary injunction motions in this case, the effect may be important.

Apart from the impact of the pendency of *Henness v. DeWine*, the Court notes the probable impracticality of the current schedule in the Cleveland Jackson case. That case is presently scheduled for hearing on September 24 and 25, 2019. Jackson has listed as expert witnesses Doctors Mark Edgar, David Greenblatt, Matthew Exline, Charles Blanke and James Williams

(ECF No. 2256, PageID 108247). As lay witnesses he has listed Defendants ODRC Director Annette Chambers-Smith, Ronald Erdos, Edwin Voorhies, Richard Theodore and non-defendant witnesses Carrie Southard, Eric Griffin, Gregory Peay, Steven Turley, other unnamed representatives of the Utah Department of Corrections, Melissa Brown, Ivana Hryniw, Chas Sisk, Adam Tamburin, Travis Loller, Aaron Katz, Theresa Willard, records custodians from ODRC, the Ohio Pharmacy Services, the Utah Department of Corrections, and other unnamed records custodians. *Id.* at PageID 108247-56. Defendants have listed as experts Doctors Joseph Antognini, Daniel Buffington, Charles Kokes, and Steve Yun. As lay witnesses they have listed execution Team members 10, 17, 31, and 32; Warden Erdos; Director Chambers-Smith, Stuart Hudson, Richard Theodore, Carrie Southard, Eric Griffin, a representative of the Ohio Department of Mental Health and Addiction Services, and Plaintiff Cleveland Jackson. Even with overlap among the lay witnesses, that is a total of thirty-five witnesses.

It will not be possible to respectfully hear and attentively listen to thirty-five witnesses in two days of court time. It is accordingly ORDERED that not later than noon on August 12, 2019, the parties file proposals for addressing this difficulty. Shall the Court set aside additional time for the hearing? When? Counsel should bear in mind that we are presently preparing to litigate over a protocol the Governor has said the State will not use **or** over a new protocol which has not yet been announced, much less been subject to discovery. Announcement of a new protocol even today would leave Jackson with less than one hundred days to amend his motion for preliminary injunction based on the new protocol and then this Court, the Sixth Circuit, and the Supreme Court of the United States to adjudicate a case based on a new protocol.

The next telephone status conference in this case is set for Tuesday, August 13, 2019, at 9:30 a.m. following the same protocol noted in the Minutes of the August 6, 2019, conference (ECF No. 2311).

August 6, 2019.

s/ *Michael R. Merz*
United States Magistrate Judge